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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

JAMES BAHR,
Plaintiff,
vs.

AETNA LIFE INSURANCE
COMPANY; and, STERLING
COMMERCE, INC. EMPLOYEE
WELFARE BENEFIT PLAN,
Defendants.

Case No: CV11-02500 RGK(PLAx)

**PARTIES' JOINT REPORT
PURSUANT TO RULE 26(f)**

Scheduling Conference:

Date: August 8, 2011
Time: 9:00 AM
Place: Courtroom 850
Judge: Hon. R. Gary Klausner

Date Action Filed: March 24, 2011

Pursuant to Federal Rule of Civil Procedure 26(f) and 16(b), Local Rule 26, and the Order Setting Scheduling Conference dated June 9, 2011, counsel for Plaintiff James Bahr (“Bahr” or “Plaintiff”) and Defendants Aetna Life Insurance Company (“Aetna”) and Sterling Commerce, Inc. Employee Welfare Benefit Plan (the “Plan”) (collectively, “Defendants”) have conducted their meeting of counsel and hereby submit the following Joint Report:

A. Subject Matter Jurisdiction

The basis for subject matter jurisdiction is federal question, as Plaintiff’s claims arise out of the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* (“ERISA”).

B. Concise Statement of Factual and Legal Basis of Claims and Defenses

Per Plaintiff: This action involves plaintiff James Bahr’s claim to recover disability benefits pursuant to Sterling Commerce, Inc. Employee Welfare Benefit Plan, which is insured and administered by Aetna. The Plan is regulated by ERISA.

Prior to his disability, Mr. Bahr was a Senior Delivery Consultant with Sterling Commerce, Inc. On April 20, 2007, Mr. Bahr became disabled under the terms of the Plan due to severe persistent back and leg pain (which subsequently required surgery) and side effects from his prescribed medications. He was diagnosed with lumbar radiculopathy and stenosis with multi-level degeneration and bulging disks, confirmed by multiple MRIs. On August 11, 2008, Mr. Bahr underwent spinal fusion at L3-L5. Unfortunately, Mr. Bahr continued to suffer with low back pain radiating down his right leg. On May 12, 2009, the Social Security Administration determined that Mr. Bahr was totally disabled as of April 20, 2007.

Aetna approved Mr. Bahr’s claim and paid disability benefits during the 24-month own occupation period. On July 17, 2009, Aetna denied further benefits as

1 it had determined that Mr. Bahr did not meet the any occupation definition of
2 disability under the Plan. Mr. Bahr timely appealed and submitted additional
3 medical evidence in support of his disability. On December 29, 2009, Aetna
4 upheld it prior denial. Mr. Bahr subsequently filed the present suit to obtain
5 disability benefits under the Plan.

6 At issue is whether Mr. Bahr is disabled under the terms of the Plan. Also at
7 issue is the amount of deference the Court will afford Aetna's determination. As
8 the Plan appears to contain discretionary language, the Court will review the claim
9 determination for an abuse of discretion. However, any deference afforded to the
10 claim decision should be lessened by reason of Aetna's conflict of interest as both
11 the claims administrator and the funding source of plan benefits. *Metropolitan Life*
12 *v. Glenn*, 128 S. Ct. 2343 (2008); *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d
13 955, 959 (9th Cir. 2006) (en banc) (applying an "abuse of discretion review,
14 tempered by skepticism commensurate with the plan administrator's conflict of
15 interest).

16 **Per Defendants:** This action involves Plaintiff's claims for disability
17 benefits under the Disability, Life, and Accident Plans (the "Plan"), which is an
18 employee welfare benefit plan sponsored and maintained by Sterling Commerce
19 Inc, and which includes a Long-Term Disability Plan ("LTD Plan"). Aetna is the
20 insurer and claims administrator for the LTD Plan. In the instant matter, Plaintiff
21 was employed by Sterling Commerce as Senior Delivery Consultant when his
22 disability claim was incurred in April of 2007. Plaintiff was entitled to benefits
23 and actually paid benefits for 24 months under the "own occupation" disability
24 coverage. It is Defendants' position that Plaintiff is not entitled to disability
25 benefits beyond July 31, 2009, and that Aetna's decision to deny Plaintiff's claim
26 for disability benefits beyond that date was proper. Aetna denied further benefits
27 as it had determined that Mr. Bahr did not meet the "any occupation" definition of
28 disability under the Plan.

1 The Group Policy provides Aetna with discretionary authority to determine
2 whether and to what extent employees and beneficiaries are entitled to benefits,
3 and to construe any disputed or doubtful terms of the policy. Accordingly, at issue
4 is whether Aetna's decision to deny Plaintiff's claim for disability benefits was
5 proper when reviewed for an *abuse of discretion*. It is Aetna's position that it did
6 not abuse its discretion and that its decision should be affirmed by the Court.

7
8 **C. Amendment of the Pleadings or Additional Parties**

9 The parties do not anticipate any amendments to the pleadings or that any
10 additional parties will be added.

11
12 **D. FRCP 26(a) – Initial Disclosures**

13 The parties agree to exchange Initial Disclosures on or before August 8,
14 2011. Defendants' Initial Disclosures consists of a complete copy of the
15 administrative record.

16
17 **E. Discovery Plan**

18 **Per Plaintiff:** As Aetna's policy appears to contain discretionary language,
19 the Court will review the claim determination under the abuse of discretion
20 standard of review. However, any deference afforded to the claim decision should
21 be lessened by reason of Aetna's conflict of interest as both the claims
22 administrator and the funding source of plan benefits. Pursuant to *Abatie v. Alta*
23 *Health & Life Ins. Co.*, 458 F.3d 955 (9th Cir. 2006) (en banc), *Metropolitan Life*
24 *Insurance Co. v. Glenn*, 128 S. Ct. 2343 (2008) and *Nolan v. Heald College*, 551
25 F.3d 1148 (9th Cir. 2009), some discovery is necessary on the issue of Aetna's
26 conflict of interest. In *Abatie*, the Ninth Circuit confirmed that district courts may
27 consider evidence outside of the administrative record in ERISA cases "to decide
28 the nature, extent, and effect on the decision-making process of any conflict of

1 interest” in order to determine the appropriate level of scrutiny the court will give
2 to a conflicted administrator’s decision to deny the claim. *Abatie*, 458 F.3d at 970.
3 Because the plan participant necessarily cannot have access to information outside
4 of the administrative record without discovery, discovery is permitted to enable
5 courts to consider the evidence that the *Abatie* court contemplated. *See Welch v.*
6 *Metropolitan Life Ins. Co.*, 480 F.3d 942, 949-50 (9th Cir. 2007) (“Because an
7 ERISA plaintiff may be permitted to supplement the administrative record with
8 evidence of a conflict of interest on the part of the defendant . . . *some* discovery
9 aimed at demonstrating a conflict of interest may have been appropriate.”).

10 Plaintiff plans on pursuing limited discovery regarding potential conflict
11 factors, including Aetna’s relationship with its consulting physicians, Dr. James
12 Wallquist and Dr. Rick Pospisil, and third-party vendor MES Solutions.

13 **Per Defendants:** Defendants provided Plaintiff with a complete copy of the
14 Administrative Record on July 20, 2011. Defendants reserve the right to object to
15 discovery additional and extrinsic to the Administrative Record, and will oppose
16 discovery to the extent it is impermissible and beyond that permitted by applicable
17 law, including that set forth in *Abatie v. Alta Health & Life Insurance Company*,
18 458 F.3d 955 (9th Cir. 2006).

19 Further, Defendants assert that *Abatie v. Alta Health & Life Insurance Co.*,
20 458 F. 3d 955, 965, 967-968, 971 (9th Cir. 2006), provides that when a claim
21 administrator both insures and administers plan benefits, this dual role alone
22 amounts to no more than a structural conflict of interest.

23 **Discovery Cut-off:** The parties propose a discovery cut-off date of
24 February 27, 2012.

25
26 **F. Expert Witnesses**

27 The parties agree that because this is an ERISA action subject to an abuse of
28 discretion standard of review, experts are not warranted.

1 **G. Settlement Procedure**

2 Counsel for Plaintiff and Defendants has previously settled a number of
3 ERISA cases and believe this case would be appropriate for private mediation.
4 Pursuant to Local Rule 16-15.4, the parties elect Settlement Procedure No. 3 [Non-
5 judicial dispute resolution proceeding]. The parties have agreed to private
6 mediation.

7 With respect to prospects of settlement and proposed date of compliance
8 with Local Rule 16-15, it is the position of both Plaintiff and Defendants that the
9 parties need sufficient time to review the documents produced by each side, the
10 claims and defenses asserted, and to properly value the case and that they can then
11 discuss settlement. The parties propose that the deadline to complete mediation be
12 set for December 30, 2011.

13
14
15 **H. Dispositive Motions**

16 The parties do not anticipate filing any dispositive motions.

17
18 **I. Court Trial**

19 Trial will be to the Court and is estimated at ½ day.

20
21 **J. Proposed Pre-Trial Conference and Trial Date**

22 The parties agree and respectfully submit that this case is appropriate for
23 waiver of the Pre-Trial Conference, given the streamlined procedures proposed
24 herein and the evidentiary limitations required by ERISA. Therefore, the parties
25 request that the Court order that the Pre-Trial Conference is waived, pursuant to
26 Local Rule 16-11.

27 The parties anticipate a half-day bench trial and request that the trial take
28 place on or about May 15, 2012. The parties request a deadline of April 14, 2012

1 to submit initial trial briefs. The parties request a deadline of May 1, 2012 to
2 submit responsive trial briefs.

3
4 **K. Other Issues Affecting Status or Management of the Case**

5 The parties are not aware of any other issues affecting status or management
6 of the case.

7
8 **L. Proposals Regarding Severance, Bifurcation or Other Ordering of Proof**

9 The parties do not have any proposals regarding severance, bifurcation or
10 other ordering of proof.

11
12
13 Dated: August 1, 2011

DARRASLAW

14
15 /s/ Lissa A. Martinez

16 FRANK N. DARRAS

17 LISSA A. MARTINEZ

SUSAN B. GRABARSKY

Attorneys for Plaintiff

18
19 Dated: August 1, 2011

GORDON & REES LLP

20
21 /s/ A. Louis Dorny

22 RONALD K. ALBERTS

A. LOUIS DORNY

Attorneys for Defendants

24 AETNA LIFE INSURANCE COMPANY

and STERLING COMMERCE, INC.

EMPLOYEE WELFARE BENEFIT PLAN